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For participants only

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Held at the Palais des Nations, Geneva, on Friday, 20 July 2018, at 10 a.m.

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Argüello Gómez
	Mr. Aurescu
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Peter
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Wako
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10 a.m.

Succession of States in respect of State responsibility (agenda item 10) (*continued*) (A/CN.4/719)

The Chair invited the Commission to resume its consideration of the second report of the Special Rapporteur on the topic of succession of States in respect of State responsibility (A/CN.4/719).

Mr. Hassouna, continuing the statement he had begun at the previous meeting, said that in paragraphs 138 to 145 of the second report, which dealt with the transfer of part of the territory of a State, the subject of draft article 9, the Special Rapporteur did not address the possibility of cession whereby a State agreed to transfer part of its territory to another State without the consent of the territory's population. Such a situation might also be called expulsion and might become an issue of increasing importance with respect to existing non-self-governing territories. International law, as presented in the report, did not prescribe any limits on the right of a State to cede its territory. In the context of forced cession, that would reveal the basic tension between territorial sovereignty and self-determination in international law. While most of the law of State succession focused on territorial sovereignty, the Commission would be right to underscore the fundamental principle of self-determination in that context.

Draft articles 10 and 11 reflected situations of State succession where the predecessor State no longer existed. In such cases, the application of the general rule of non-succession would lead to the inequitable result of no State incurring obligations of responsibility; accordingly, that rule should not apply. The Special Rapporteur submitted that the general rule of non-succession should be replaced by a presumption of succession in respect of obligations arising from State responsibility. However, that presumption was not reflected in draft articles 10 and 11. The Drafting Committee should consider whether to phrase those draft articles as definite rules, subject to agreements or subject to a presumption of succession. Additionally, it might be appropriate to clarify, either in the text of the draft articles or in the corresponding commentaries, that those draft articles applied to situations where the predecessor State no longer existed.

With regard to draft article 10, the Special Rapporteur explained that the title of draft article 10, "Uniting of States", encompassed situations of unification, as described in paragraph 1, where two or more States came together and formed a new successor State, and instances of incorporation, as described in paragraph 2, where a State merged with an existing State. While the phrase "unification" was used throughout the report, specifically in paragraphs 149 to 156, paragraph 1 of draft principle 10 referred instead, more generally, to States that united. In order to distinguish between cases of "unification", which the Special Rapporteur intended to cover in the situations addressed in paragraph 1, and "uniting of States", as a broader term, the paragraph should be revised so as to refer to "unification of States."

The intent behind draft article 10 (3) was not clear. In the first instance, it appeared to reiterate the entitlement of States to set up self-contained regimes that took precedence over the general rules. The only limits to that entitlement were the same as those that applied to any *lex specialis*, namely, as expressed in the commentary to article 55 of the articles on responsibility of States for internationally wrongful acts, that "States cannot, even as between themselves, provide for legal consequences of a breach of their mutual obligations which would authorize acts contrary to peremptory norms of general international law ... the special rules in question [must] have at least the same legal rank as those expressed in the articles". That fact could be alluded to briefly in the commentary, as it was an undisputed principle of international law. If, however, the purpose of draft article 10 (3) was to emphasize the necessity of consent by the injured third State, then the paragraph could be redrafted with that in mind, or it could perhaps be moved to the commentary.

Draft article 11 dealt with the dissolution of States, an area in which State practice was even more highly case-specific. The Commission should therefore be wary of drawing general rules. The example of the United Arab Republic, discussed in paragraph 170,

showed that issues relating to State responsibility after dissolution were dealt with satisfactorily through bilateral agreements. The Special Rapporteur acknowledged as much in paragraph 187, where he stated his intention to underline the role of agreements. However, the phrasing he had chosen to preserve the role of agreements in paragraph 1 of draft article 11 raised a potential problem: while the paragraph correctly emphasized that the agreement between the predecessor State and the successor States determined how the obligations were passed, it offered no way forward in the case of non-agreement and might even be interpreted as allowing predecessor and successor States to agree among themselves, and without the agreement of the injured States, to render the obligation moot. While the Special Rapporteur's decision to emphasize the centrality of agreements in that area of succession was correct, given the scarcity of State practice, the purpose of such draft articles must also be to provide default rules in case of failure of the special regime; indeed, an African State in the Sixth Committee had expressed just such a view. To avoid an interpretation that denied the possibility of residual application of the general rules contained in the draft articles in the case of non-agreement, the term "subject to an agreement," should be clarified. In addition, the paragraph could be made clearer by replacing the phrase "one, several or all the successor States" with "the State or States concerned".

Paragraph 2 adequately captured the need to negotiate in good faith. If the Drafting Committee chose to retain paragraph 1, the opening phrase of the first sentence could be shortened to read: "When a State dissolves into two or more successor States,". Another possible improvement to paragraph 2 would be to clarify the catch-all words "other relevant factors". Paragraph 189 identified some relevant factors and proposed addressing more relevant factors at a later stage. Only two of those factors were listed in the draft article itself; more factors should be included, either in the draft article or in the commentary, to provide better guidance to States.

Finally, concerning future work on the topic, the Special Rapporteur should continue to pursue a flexible approach with respect to the transfer of rights or claims of an injured predecessor State to the successor State. The Special Rapporteur could also consider drafting model clauses to be used as a basis for negotiation of agreements on succession in respect of State responsibility, or compiling an annex of contemporary dissolution of State agreements. Attention should be paid to the role of succession agreements, the prevalence of which continued to be a significant element of State practice in the context of the topic. Lastly, noting that States in the Sixth Committee were split on whether work on the topic should address international organizations, he said that he would welcome the Special Rapporteur's comments on how he planned to proceed in that regard in future work.

In conclusion, he wished to thank the Special Rapporteur once more for an excellent second report. In the light of the different views expressed in the discussion, he supported the referral of all seven draft articles to the Drafting Committee.

Mr. Huang, after thanking the Special Rapporteur for his second report on the topic, said that he wished to address a matter of concern that deserved the close attention of the Commission, namely the replication in the report of the work of academic institutions such as the Institute of International Law. While some colleagues had already touched upon the issue indirectly in their statements, he intended to be more direct in his comments.

The topic, which addressed two highly complex and sensitive issues, namely State succession and State responsibility, was a difficult one. The biggest difficulty lay in the scarcity of relevant State practice. To make up for that scarcity, the Special Rapporteur referred extensively in his report to legal writings and research outcomes, citing frequently, among others, the views of Patrick Dumberry of the Graduate Institute of International and Development Studies and the 2015 resolution of the Institute of International Law on succession of States in matters of international responsibility. In fact, almost every draft article proposed by the Special Rapporteur corresponded to articles of the Institute's resolution and, in some instances, their titles and wording were almost identical. In that connection, he recalled with concern the keynote address delivered by Mr. Schrijver, the President of the Institute, at the event held in New York on 21 May 2018 to commemorate the seventieth anniversary of the Commission, at which the latter had noted that the Institute and the Commission had examined, sometimes concurrently, many of the same

topics, including the succession of States in respect of State responsibility, which was currently being considered by the Commission. He was deeply concerned as to how the Commission would be able to maintain its prestige and central position in the progressive development and codification of international law, as mandated by the General Assembly in accordance with the Charter of the United Nations, if its work relied excessively on existing outcomes of private academic groups or the international law community. While the Commission could and should refer to the jurisprudence of international courts and tribunals and the works of eminent scholars, it must never forget its uniquely central position and leading role in the progressive development and codification of international law or the fact that, as a subsidiary body of the General Assembly, not a private academic institution, its work should always be carried out in close cooperation with the political authorities of States and that actions in respect of the drafts prepared by it should be decided upon by the General Assembly.

While it was true that in his second report the Special Rapporteur did not totally neglect existing State practice, he cited very few instances thereof, relying in some cases on indirect sources, such as the works of other scholars. It could be questioned therefore to what extent the cases cited by the Special Rapporteur reflected *lex lata* with regard to succession of States in respect of State responsibility and, further, whether it was possible to produce, on such a basis, some generally applicable rules of customary international law. In fact, the Special Rapporteur himself admitted that State practice in that field was diverse and context-specific, involving historical, cultural and political factors, and that seemingly identical cases might be driven by entirely different logic and considerations.

Moreover, the State practice cited in the report did not adequately support the Special Rapporteur's arguments developed therein. For example, the report referred to many decisions by the European Court of Human Rights. Yet those decisions were not immediately related to the succession of States in respect of State responsibility as they dealt with the legal relationship between States and private individuals and touched upon the civil liabilities of the former towards the latter. What the Commission was discussing in the context of the current topic was the legal relationship between States and the responsibility of one State to another State arising from internationally wrongful acts. Different legal systems and rules were involved. A case in point was that of *Bijelić v. Montenegro and Serbia*, which was cited in paragraph 62 of the report. What that case had actually involved was the transfer of State civil liability to a private individual rather than the succession of State responsibility. In the same vein, the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, referred to in paragraphs 179 to 183 of the report, could hardly vindicate the Special Rapporteur's views, since the International Court of Justice had held that the Federal Republic of Yugoslavia had not been bound by the Convention on the Prevention and Punishment of the Crime of Genocide; it had thus offered no guidance on the succession of State responsibility.

Apart from State practice, *opinio juris* in that regard also deserved attention. The Special Rapporteur listed some facts pointing to successor States' taking over the responsibility of reparation of the predecessor States, without dwelling on the legal position of the former in that process, which was however the core element of *opinio juris*. The simple act of taking over the responsibility of reparation of a predecessor State might reflect a voluntary decision of the State concerned or its reluctant acceptance of a decision of an international tribunal. It was not possible to deduce directly that such act was based on an *opinio juris* regarding the rules of the succession of State responsibility on the part of the successor State. In some instances, the States in question did not believe that they were required to assume the State responsibilities involved but for various reasons did so unwillingly. The existence of *opinio juris* regarding the rules of the succession of State responsibility could be questioned in such cases. For example, in the *Lighthouses* arbitration, referred to in paragraph 142 of the report, Greece had in fact assumed State responsibility on behalf of the Ottoman Empire based on its obligation to follow the arbitration decision. With regard to the dispute between Viet Nam and the United States of America cited in paragraph 155, as had been clarified by Mr. Nguyen at an earlier meeting, it involved what was essentially a political agreement between the two States, and was

irrelevant to the issue of succession of State responsibility; much less could it be seen as exemplifying *opinio juris* on rules of State succession.

Turning to the draft articles themselves, he said that paragraph 1 of draft article 6 appeared to reaffirm the general rule of non-succession, a position that he supported. However, although the Special Rapporteur acknowledged the general rule of non-succession, he deviated greatly from the principle of non-succession in elaborating the various scenarios of succession, most notably in draft articles 10 and 11. When addressing the issue of succession in situations involving State unification and State dissolution, the Special Rapporteur discarded the principle of non-succession entirely, probably having been overwhelmed by the resolutions of the Institute of International Law. He disagreed with the view set out in paragraph 2 of draft article 6, which addressed the succession to State responsibility resulting from internationally wrongful acts of a continuous nature. For him, from the time the internationally wrongful act happened until State succession occurred, the act should be attributed to the predecessor State and give rise to the State responsibility of the predecessor State. Thereafter, *i.e.* following State succession, if the wrongful act continued, it should be attributed to the successor State that had obtained new legal personality, starting from the moment of succession, and give rise to the State responsibility of the successor State proper; in that scenario, the State responsibility of the predecessor State should not simply be transferred to the successor State. It was evident in that case that, although the State succession occurred, it did not trigger succession to State responsibility.

Draft article 10 dealt with succession to State responsibility in situations of State unification and was based on four cases involving the United Arab Republic, Viet Nam, the United Republic of Tanzania and Yemen, respectively. As expressly stated in paragraph 156 of the report, in the cases involving the United Republic of Tanzania and Yemen, it was impossible to find statements on behalf of the predecessor States with regard to succession to State responsibility. In the other two cases, bilateral agreements between the United Arab Republic and France, on the one hand, and between Viet Nam and the United States of America, on the other, had formed the basis of transfer of State responsibility. Combined, the four cases did not demonstrate any deviation from the general rule of non-succession in situations of State unification. Therefore, he agreed with some members that draft article 10 was not ripe for submission to the Drafting Committee.

He shared the doubts expressed by many members regarding draft article 11, which addressed situations of State dissolution where the rule of succession replaced entirely the general rule of non-succession. In the analysis set out in paragraphs 168 to 184 of the report, four cases were cited involving the Union of Colombia, the United Arab Republic, Czechoslovakia and the former Yugoslavia. In those cases, agreements had been reached between the predecessor States and the successor States under which the latter took over the State responsibilities of the former. The question that arose was whether the succession to State responsibility derived from agreements or whether, as claimed by the Special Rapporteur, the existence of an exception to the general rule of non-succession gave rise to the succession to State responsibility. It seemed to him that logic pointed to the former scenario. He recalled in that connection that, in the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, the International Court of Justice had held that Slovakia should succeed Czechoslovakia in terms of the rights and obligations of the project on account of the special agreement concluded between Hungary and Slovakia rather than based on any rule of succession to State responsibility. He would argue that, if a rule of exception to non-succession were to exist, the successor State would take over the State responsibility of the predecessor State out of the belief that it was required by such rule to do so. However, the aforementioned four cases demonstrated in essence that the successor States took over the State responsibilities of the predecessor States of their own will rather than out of a belief that certain rules required them to do so. There was a clear distinction between the two situations; they should not be confused.

In conclusion, with the exception of draft articles 10 and 11, he agreed that the draft articles should be submitted to the Drafting Committee.

Mr. Grossman Guiloff, after thanking the Special Rapporteur for his second report, said that he first wished to offer some general comments. The codification and development

of international law was of fundamental importance and, as stated by the Special Rapporteur, it required realistic and flexible approaches. He agreed that any solution must respect the *pacta tertiis* rule and that legality of succession must be dealt with at the current early stage, particularly because State succession was a rare occurrence. In line with article 6 of the 1978 Vienna Convention on Succession of States in respect of Treaties, the effects of a succession of States that had occurred in conformity with international law must be recognized. He agreed, however, with the concern voiced by Mr. Reinisch, that the Commission should be careful not to grant a position of privilege to unlawful situations of succession, in the sense that the limited scope of the draft articles should not be interpreted in a way that would restrict the international responsibility of States or subjects that had acted against international law.

The general rules were needed so that the non-succession principle and its exceptions could be applied to situations of internationally wrongful acts where succession had occurred. The two categories alluded to in the report, namely internationally wrongful acts where the predecessor State remained in existence and internationally wrongful acts where the predecessor State had ceased to exist, should be clearly described. Greater clarification was needed to ensure that the proposed draft articles would be properly understood. The Special Rapporteur should also elaborate further on the degree of responsibility applicable in all situations and clarify the nature and role of the "particular circumstances" mentioned in draft articles 7, 8 and 9, including the degree of State responsibility and the binding effects. Likewise, disputes among States must be resolved in accordance with international law and, when appropriate, taking account of the need for justice, as stated in Article 2 (3) of the Charter of the United Nations. As many speakers had already noted, negotiation among States must take place in good faith. In analysing the conclusions drawn by the Special Rapporteur, the Commission would be on safe ground if it followed the 1969 Vienna Convention on the Law of Treaties, the norms of State responsibility and other important normative contributions from the work of the Commission.

Turning to the draft articles themselves, he said that he supported draft article 5, considering it to be in conformity with international law, the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. He also generally agreed that the Special Rapporteur's analysis of the legality of succession should be followed.

He appreciated the Rapporteur's diligent effort in stating the general rule on non-succession in draft article 6. He understood paragraph 1 to mean that any internationally wrongful act committed by a State before the date of succession would always be attributed to that predecessor State. However, he agreed with other colleagues that the wording should be revised to fully clarify the Special Rapporteur's meaning and intention. Paragraph 1, which seemed to reflect what was stated in paragraph 45 of the report, namely that "every internationally wrongful act of a State entails international responsibility of that State", seemed somewhat redundant because, if the internationally wrongful act had occurred before succession, it could be said to be irrelevant to the act of succession itself, and thus the wrongful act would always be attributed to the predecessor State. Paragraph 2 clarified the relation to succession by stating that, in the event that the predecessor State continued to exist, "the injured State or subject may, even after the date of succession, invoke the responsibility of the predecessor State and claim from it a reparation for the damage caused by such internationally wrongful act". If his intention was to address a situation where a predecessor State remained in existence after the succession had occurred, the Special Rapporteur might consider merging paragraphs 1 and 2. As Mr. Hmoud had suggested, the Special Rapporteur should produce a clear and direct draft article that expressly provided for the rule of non-succession, as a general rule, and not only for situations of a continuator State.

Draft article 6 (3) could be interpreted as allowing an exception to the general rule of non-succession when the successor State continued an internationally wrongful act begun by the predecessor State. Further clarification was required either in the text itself or in the commentary. Additionally, a more accurate example of a continuous act in the case of disappearances could be provided than the *Blake v. Guatemala (Merits)* case mentioned. In

that case, the Inter-American Court of Human Rights had considered that Mr. Blake's disappearance and death had occurred before Guatemala had ratified the American Convention on Human Rights. The Court had therefore adjudicated responsibility to Guatemala not on the basis of a continuous act committed against Mr. Blake, but rather in the context of the wrongful acts committed towards the family. It had stated that Guatemala should:

> "Make full reparation to Nicholas Chapman Blake's next of kin for the grave material and moral damage suffered as a result of the multiple violations of rights protected by the Convention and the enormous expenses incurred by the victim's relatives to establish his whereabouts and identify those responsible for his disappearance and its subsequent concealment."

It had also resolved that:

> "The acts of deprivation of Mr. Blake's freedom and his assassination were completed in March 1985, that those events could not *per se* be considered to be of a continuing nature, and that the Court was incompetent to decide on the State's responsibility for those acts."

Accordingly, it would be more appropriate if the Special Rapporteur were to cite article 17 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance and article II of the Inter-American Convention on Forced Disappearance of Persons.

Unless the Special Rapporteur could explain the reason for its inclusion, he would recommend that draft article 6 (4), which could be read as a preface to the following articles, should be omitted, to avoid confusion. If it was retained in a modified version, he concurred with Mr. Aurescu that the interaction between responsibility, reparation and damage should be harmonized and better explained. The report mentioned only that an injured State might claim reparation for damages suffered that resulted from an internationally wrongful act committed by the predecessor State.

Draft article 7 provided clear direction for States in respect of separation of parts of a State, and he welcomed the description of the exceptions to paragraph 1 provided in paragraphs 2 and 3. Paragraph 4 could be interpreted as saying the same as draft article 8 (3); the Special Rapporteur should therefore consider striking paragraph 4 from draft article 7 and including secession or separation of territory under draft article 8 (3).

In connection with draft article 8, on "newly independent states", he agreed with Sir Michael Wood that draft article 2, on use of terms, should include the definition of that term contained in the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of State in respect of State Property, Archives and Debts. Consent was very important to the stability of international law because a State should not be punished for the acts of another State. It was also important under draft article 8 that a former colonized State should not be punished for the internationally wrongful acts of the former colonial power, following the principle of *tabula rasa*. Lastly, in draft article 8 (3), care should be taken in respect of the inclusion of insurgents under the umbrella of "other movements", as noted by the Special Rapporteur in paragraph 112 of the report.

On the transfer of part of the territory of a State, draft article 9 (1) set forth the general principle of non-succession in that context, while exceptions to the general rule of non-succession were laid out in paragraphs 2 and 3. While he would like to see an explanation of the expression "if particular circumstances so require", he agreed with the substance of the article. In paragraph 3, the Special Rapporteur should elaborate on the concept of "direct link", wording that was also used in draft article 8 (2), in order to avoid any confusion as to the type of link that could be classified as "direct". Some of those concerns might be better addressed in the commentary.

Draft article 10 reflected a clear provision of international law. He agreed with the Special Rapporteur that, in the event of a union and the formation of a new successor State, an internationally wrongful act of any predecessor State should pass on to the new successor State. He did not consider it necessary to elaborate on State practice, given its

limited use in that context. Prior to unification, it was up to the States to perform due diligence and understand the international obligations that would arise from internationally wrongful acts that had been committed previously. He therefore agreed that the obligations would remain unless the successor State received the consent of the injured State, as provided for in draft article 10 (3). He recommended retaining proposed draft article 10 in its current wording for the Drafting Committee.

He considered draft article 11 to be the most contentious of the draft articles, since it concerned only the situation where the predecessor State had ceased to exist. Paragraph 1 deviated from the general rule on non-succession set out in draft article 6 and replaced it with a general rule of succession in cases of dissolution. Clarification was needed of the phrase "subject to an agreement" so as to indicate whether the obligation of an internationally wrongful act passed to the successor State because it had agreed to assume the obligation or whether it passed automatically, with or without an agreement, the "agreement" in the given context referring to the apportionment of the obligations among the successor States. If the former applied, then the phrase would be in conformity with the general rule of non-succession and *pacta tertiis*. If the latter meaning was intended, there would have to be negotiations between the successor States and the injured State. State practice tended to support the former. For example, the successor States of Gran Colombia in 1831, of the United Arab Republic in 1961 and of Czechoslovakia in 1993 had agreed to assume the obligations. As Mr. Reinisch had highlighted in his statement, requesting compensation from the successor State relied "solely upon the ground that the obligation to indemnify for such losses rested upon the country within which the injury was inflicted". Other members of the Commission had offered valid criticisms in respect of whether the obligation could pass with or without an agreement, but he remained convinced that the transfer of obligations in the absence of an agreement should remain in the text and be further clarified either in the commentary or by the Special Rapporteur.

The terms "good faith" and "equitable proportion" in draft article 11 (2) needed clarification, the latter appearing to limit the meaning of "good faith" during negotiations. In paragraph 189 of the report, the Special Rapporteur stated that "in cases where no territorial link exists, the distribution of the obligation of reparation (in particular, compensation) may follow the equitable proportion used for distribution of State property and debts". As he understood it, the Special Rapporteur intended "equitable proportion" to have the same meaning as in the 1983 Vienna Convention.

He agreed with Mr. Hmoud that it would be preferable to revise draft articles 10 and 11 using the underlying general rule of non-succession rather than a presumption of succession. As Mr. Hmoud had suggested, attribution remained a cardinal element for assumption of responsibility for the wrongful act by the wrongdoer and for that wrongdoer to assume the consequences. He would be reluctant to deviate from the general rule of non-succession solely to force a State to pay damages to an injured party. He remained unconvinced that the Special Rapporteur valued the rule of non-attribution. State practice supported the general rule on non-succession, which had led to injured States entering into bilateral agreements on voluntary compensation. He therefore recommended that the Special Rapporteur should elaborate further on the rule of non-attribution.

He supported the idea that it was essential to focus on general rules as well as issues related to transfer of obligations. The general rules constituted a coherent whole with the draft articles and provided important opportunities for a constructive and interactive dialogue with the Sixth Committee.

In conclusion, he supported sending all the draft articles to the Drafting Committee, taking account of the different comments made.

Mr. Nolte said that he wished to congratulate the Special Rapporteur on his report, which was excellently researched and well argued, and would provide valuable guidance for the future work of the Commission on the topic.

The debate on the topic within the Commission at its seventieth session had already been very rich, so much so that the Commission was under considerable time pressure. He would therefore not address the report and the proposed draft articles comprehensively.

Instead, he would focus on one specific case and one draft article, before indicating his position on the other draft articles by associating himself with previous speakers.

In his statement the previous day, Mr. Petrič had said that the Special Rapporteur, in proposing draft article 10, entitled "Uniting of States", had relied too heavily on a single case study, namely the reunification of Germany. Indeed, in the report, the case of Germany was invoked as the primary precedent for proposing draft article 10, which reversed the traditional rule of non-succession and postulated a rule of succession for cases of unification in which a predecessor State ceased to exist.

It was worthwhile assessing the case, as a closer look at the sources quoted in the report demonstrated that the reunification of Germany did not support draft article 10. Rather, the sources pointed in the opposite direction. In paragraph 160 of the report, the Special Rapporteur quoted a judgment of the German Federal Administrative Court. He asserted that the judgment "provides an exception to the traditional approach of non-succession". However, first of all, the judgment confirmed the traditional rule of non-succession in strong terms by mentioning a constant jurisprudence of the Federal Constitutional Court of Germany and "unanimity among authors" to the effect that a successor State was not responsible for the internationally wrongful acts of a predecessor State that no longer existed. Only after recognizing the traditional general rule of non-succession, which went squarely against proposed draft article 10, did the Court acknowledge a very limited exception by stating that pending claims for compensation for expropriations did pass to the successor State. The sources cited by the German Federal Administrative Court in support of that limited exception confirmed the point made by Mr. Reinisch, namely that the obligation to pay compensation for expropriation did not arise from succession to State responsibility for wrongful acts, but from the primary obligation not to expropriate without adequate compensation. In short, the Special Rapporteur invoked the recognition of a very limited exception to the traditional approach of non-succession in order to support a much broader rule, so that the exception would come to engulf the rule. In his view, that was not how the traditional approach of non-succession could be overcome.

As a result, proposed draft article 10 could not be based on that particular element of State practice. In fact, it ran counter to that practice. Moreover, the Federal Republic of Germany had not otherwise recognized its responsibility for internationally wrongful acts committed by the German Democratic Republic, other than on the basis of a specific agreement. Other cases of unification mentioned in the report did not support draft article 10, either. The case of the United Arab Republic, which was cited in paragraph 153 of the report, concerned only agreements on expropriations, which did not fall into the category of internationally wrongful acts. The cases of Yemen and the United Republic of Tanzania supported only the proposition that no automatic succession of obligations took place, since the statements of the respective States had been limited to treaties.

The analysis of State practice on unification led to a more general point: it was one thing to say that there was very little and diverse practice, and that doctrinal and policy considerations should therefore play a greater role; it was another to go against the available State practice and say that an exception to such practice was the rule.

Were there not at least good policy reasons for the Special Rapporteur's proposal, in draft article 10, to depart from the traditional rule of non-succession? He had his doubts. To arrive at such a conclusion would first require a consideration of the reasons why successor States, in cases of unification, had, in the past, not accepted responsibility for the internationally wrongful acts of predecessor States that had ceased to exist. Looking at the cases of Germany, Viet Nam and Yemen, but also at the possibility of Korean reunification, it became plausible that the reasons for such refusals did not lie simply in a desire not to be held responsible. Rather, successor States did not — with good reason — find it acceptable to be burdened with claims related to the internationally wrongful acts of another State, to which they had not contributed, from which they had not benefited and which they might rightly consider "odious". To be burdened with such claims might be a serious impediment to a process of unification that could be in the interests of international peace and security. The unification of States typically took place when a predecessor State was in great difficulty, possibly after having committed serious violations of international law. In those

circumstances, the unification of two States might be the only politically practicable way of resolving a critical situation to which other States also wished to see a peaceful resolution. A unification was often not simply a source of enrichment for the successor State. In fact, it could create a huge economic burden that the envisaged successor State might hesitate to assume, and that might become unacceptable if it brought with it responsibility for internationally wrongful acts considered "odious". The prospect of being the successor to violations of international law would not be considered just by a successor State or its population, particularly if such violations had been committed under the protective influence of a third State. It was one thing to assume responsibility for the acts of a previous regime of one's own State, as the Federal Republic of Germany had done; it was another to have to assume responsibility for the acts of a different State that might have been an antagonist in the past.

For the reasons he had outlined, neither State practice nor certain policy considerations supported the rule of succession proposed in draft article 10. It was true that there was a policy consideration that spoke in favour of passing the obligations of an extinct predecessor State to a unified State, namely that an injured State should not lose a debtor through what was, for it, an unrelated event, and that, in relative terms, a unified State typically had the closest connection to a predecessor State. Even so, that policy consideration alone could not serve as the basis for a straightforward rule, as proposed in draft article 10, if State practice and other policy considerations spoke against it. In his view, the available State practice and its underlying policy considerations permitted only the formulation of a rule or, rather, a policy recommendation, that gave a decisive role to agreements between an injured State and a newly unified successor State. He therefore proposed that draft article 10 should be reformulated so that it became subject to the agreement of a successor State, as appropriate. Paragraph 3, as it stood, did not fit the bill; far from it. Draft article 10 should thus be redrafted to read:

"Draft article 10
Unification of States

1. When two or more States unite and form a new successor State, the obligations arising from an internationally wrongful act of any predecessor State pass to the successor State if and to the extent that the States concerned have so agreed.

2. When a State is incorporated into another existing State and ceased to exist, the obligations arising from an internationally wrongful act of the predecessor State pass to the successor State if and to the extent that the States concerned have so agreed.

3. Paragraphs 1 and 2 are without prejudice to claims of compensation for the expropriation of property."

By focusing on draft article 10 and the example of Germany, he did not wish simply to reinforce the point made by the Special Rapporteur that cases of State practice were "diverse, context-specific and sensitive". While that statement was true, it was also a bit misleading because it suggested that instances of practice were often not very helpful in the context at hand. By using the specific example of German reunification, he wished to demonstrate the importance of looking closely at instances of practice, even if they were few in number and diverse. Such instances often revealed their significance and underlying considerations only after a careful analysis.

It would be useful to explore available practice relating to the succession of States in respect of State responsibility in greater depth, as he had tried to do with the case of German reunification. That task need not necessarily be undertaken by the Special Rapporteur himself. It could perhaps be carried out by the Secretariat, which, in a study, could verify: (a) whether claims of succession in respect of State responsibility had been put forward; (b) whether such claims had been opposed by successor States; and (c) whether or not agreements had been concluded with regard to such claims in general or to a certain category of claims.

In conclusion, he agreed with previous speakers who had adopted an approach comparable to the one he had tried to illustrate by focusing on the example of Germany, including Mr. Hassouna, Mr. Hmoud, Mr. Jalloh, Mr. Nguyen, Mr. Park, Mr. Petrič, Mr. Rajput, Mr. Reinisch and Sir Michael Wood. By associating himself with previous speakers, he simply wanted to give an indication to the Special Rapporteur and others of the general perspective from which he might raise certain points in the Drafting Committee.

He recommended that all the proposed draft articles should be referred to the Drafting Committee, on the understanding — as highlighted by Mr. Hmoud — that the Drafting Committee might change the general direction of certain draft articles.

Mr. Zagaynov, noting that the topic was one of the most serious, politically sensitive and multilayered issues dealt with by the Commission, said that the Special Rapporteur had addressed many questions raised by members of the Commission and delegations in the Sixth Committee; he hoped that the current discussion would contribute to the work.

The existence or absence in international law of an established rule on the succession of States in respect of State responsibility was a basic question that had already been addressed by many previous speakers and the Special Rapporteur himself. He could not disagree with the statement in paragraph 16 of the report that "State practice is diverse, context-specific and sensitive". It seemed that most members of the Commission were of the opinion that the principle of non-succession should be followed. He agreed, however, with the Special Rapporteur that, both in doctrine and in case law, with all its limitations, it was possible to find arguments that demonstrated the diversity of approaches and suggested that there might be other answers. The commentary to the article 11 of the 2001 articles responsibility of States for internationally wrongful acts read: "In the context of State succession, it is unclear whether a new State succeeds to any State responsibility of the predecessor State with respect to its territory." State practice on succession since the Commission's adoption of those articles had added little of substance to clarify the situation. The Special Rapporteur mentioned only one situation from that period: the separation of Montenegro from the State Union of Serbia and Montenegro. Judicial decisions of recent years did not help either. The decision in the *Lighthouses* arbitration, the classic judgment in that context, noted that "the question of the transmission of responsibility in the event of a territorial change presents all the difficulties of a matter which has not yet sufficiently developed to permit solutions which are both certain and applicable equally in all possible cases. It is no less unjustifiable to admit the principle of transmission as a general rule than to deny it. It is rather and essentially a question of a kind the answer to which depends on a multitude of concrete factors." He wondered whether the matter had developed sufficiently since then to provide such an answer.

In 2010, former Commission member Mr. Mikulka had said that "neither practice nor doctrine provide a uniform answer to the question of whether and, if so, in what circumstances, a successor State may be held responsible for an internationally wrongful act of its predecessor". That had raised doubts for many members of the Commission during the consideration of the Special Rapporteur's first report. In many respects, those factors explained the inconsistency in the conclusions and assessments in both the first and the second reports.

In 2017, Mr. Reinisch had proposed an excellent analysis of a number of examples of case law, which he had continued during the current session. It could be useful to look at them from a different perspective. In the *Lighthouses* arbitration, the tribunal had been guided by, among others, the 1923 Lausanne Peace Treaty and its protocols, under which aspects related to the succession of Greece in respect of rights and obligations under the concessionary contracts concluded with the Ottoman Government or local authorities had been definitively settled. In the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, the responsibility of Slovakia had followed from the special agreement concluded between Slovakia and Hungary, the preamble to which mentioned that Slovakia was the sole successor State to Czechoslovakia in respect of rights and obligations relating to the Project. In the *Bijelić v. Montenegro and Serbia* case, the decisive argument for Montenegro assuming responsibility seemed to be that it considered itself to be bound in its legislation by obligations under a number of international treaties that had been in effect for

it prior to its declaration of independence on 3 June 2006. Finally, in the *Mwandinghi* case, Namibia had, in line with its Constitution, assumed responsibility for the acts of the South African Government.

He was not certain whether the examples given, which were all different, could be included as clear evidence of the existence or otherwise of a general rule on succession in respect of State responsibility. However, they would appear to confirm the importance of the relevant agreements between States or unilateral declarations in the given context. He agreed with Ms. Galvão Teles on the subsidiary character of any rules that could result from the work of the Commission. It would be worthwhile to consider including a provision to that end, perhaps based on the wording used by the Institute of International Law. It would also be possible to incorporate additional provisions indicating that priority should be given to seeking a settlement by concluding an international treaty, as had been done, specifically, in the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts, in which that option was considered to be of paramount importance.

Like Mr. Murase, he wondered why the proposed draft articles, in contrast to the Institute of International Law resolution, mentioned succession of States only in respect of obligations and not in respect of rights. As rights were to be considered in the third report, it would be helpful to hear from the Special Rapporteur what his plans were in that regard.

Draft article 6 provided that the responsibility of a State could be invoked by an "injured State or subject". However, in draft articles 3 and 4, the wording "another State or another subject of international law" and "injured State or subject" had been used. It would be helpful if the rationale behind the different formulations could be clarified, given that it had a direct impact on the scope of the work.

Some questions of methodology also arose. He recalled that the 2001 articles on State responsibility concerned only obligations owed to another State, to several States or to the international community as a whole and queried whether it would be right if the Commission, without having considered the matter of State responsibility in respect of other subjects of international law, were to begin to analyse succession in relation to that responsibility. As had been noted in both the first and the second reports, the Special Rapporteur planned to look at succession of States in respect of State responsibility to injured international organizations or to injured individuals in the fourth report in 2020. Perhaps that issue could be included in the current discussion, rather than waiting for the fourth report.

The Institute of International Law resolution used the wording "State or another subject of international law". However, as had been noted, the resolution covered not only the obligations of a predecessor or a successor State, but also its rights in the case of internationally wrongful acts by other States or subjects of international law. It thus addressed the responsibility of other subjects of international law as well. In the context of the current work, the Commission was limited exclusively to the topic of State responsibilities. Thus the question arose of whether it was correct to speak of State succession in respect of responsibility to other subjects of international law if the inverse situation, of succession in respect of responsibility of other subjects of international law to States, was not taken into account; in other words, whether it was correct to mention only the obligations of States but not their rights in that regard.

He therefore thought that, at the present stage, it would be best to exclude mention of other subjects or subjects of international law from the draft articles, at least until that issue had been analysed. It appeared that the approach adopted by the Commission in 2001, as expressed in article 33 (2) of the articles on State responsibility, which stated that the relevant provisions were without prejudice to "any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State" was completely reasonable.

For reasons of time, he had decided not to comment on the parts of the report concerning the end of the existence of the Soviet Union, other than to make the general comment that he did not share some of the conclusions drawn. He proposed that, as with

the assessment of the unification of Viet Nam, it would be useful to rely not only on doctrine but also on the official position of the State concerned.

He was in favour of retaining draft article 5 in its proposed wording, which reproduced the text of article 6 of the 1978 Vienna Convention on Succession of States in respect of Treaties and article 2 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts. In respect of draft article 6, he wondered, like Mr. Murphy and Ms. Galvão Teles, about the appropriateness of the article's title, given its content. It would also perhaps be good to begin by calling on States to resolve issues of succession through negotiation. He agreed that the proposed wording was not ideal and should be worked on.

The possible structure of the proposed draft articles could be built around the various types of succession, such as separation of part of a State, transfer of part of a territory, uniting of States and dissolution of a State, as had been done in the 1978 and 1983 Vienna Conventions. That, in principle, was the approach followed by the Special Rapporteur. He would also propose retaining the draft article on newly independent States, with its traditional character. He agreed with Sir Michael Wood and other members that it would be useful to provide a definition of the term, since it had been used at the end of the twentieth century and at the beginning of the twenty-first century with a different meaning from its original one.

He considered that the analysis would be incomplete and selective without the provisions on dissolution of a State. If he was not mistaken, there had not been any objections to the suggestion of sending only draft article 5, draft article 6 (1) to (3), draft article 7 (1) and draft article 9 (1) to the Drafting Committee. That shortened text would represent a cardinal departure from the logic of the two reports and the Special Rapporteur's position. It would be interesting to hear what he thought about it. Perhaps the discussion would provide an opportunity to assess once again how best to approach the topic and the format to use. He wondered whether it might perhaps be a good idea to focus for the moment on a more thorough analysis of the topic and its likely development, without moving to specific wording for the draft articles, and would be interested to know whether the Commission had ever taken that approach in its previous work.

He agreed that, given the clear lack of State practice and case law, as well as the limited possibilities of relying on an analysis of doctrine, it would be a good idea to ask States for their views. The pace at which the topic was to be considered was a matter of concern in that respect, as it could have an impact on the quality of the outcome. It would be worth looking at Mr. Nolte's suggestion of asking the Secretariat to prepare a study of case law on the matter.

In conclusion he thanked the Special Rapporteur for the work he had done and wished him success in his further work. He looked forward to hearing his reaction to the discussion of the report.

Ms. Oral said that she wished to congratulate the Special Rapporteur on his well-written report, which drew on a rich variety of sources and skilfully examined an interesting topic that was not without its complexities and challenges.

Delegations in the Sixth Committee had given mixed reviews on the topic. Some States, such as Austria, China, Greece, Portugal and Viet Nam, had criticized the extreme lack of State practice, an issue that was apparent in the report and had been raised repeatedly by other members of the Commission. The State practice that was cited in the report had been criticized for being "disproportionately" drawn from European countries. Malaysia and Mexico, for instance, had underscored the need to analyse State practice from regions outside Europe.

State succession was not an everyday occurrence, so it was, to some extent, understandable that State practice should be relatively scarce. Nevertheless, the practice that existed did not readily support any general rule of succession, which the Special Rapporteur had spoken in favour of in 2017.

Consequently, the Special Rapporteur was to be commended for taking into consideration the comments of States and members of the Commission and adopting the

position that the general rule was that of non-succession of State responsibility. His approach, in not suggesting that the rule should be replaced by another, similar theory of succession, was a wise one. As pointed out by several previous speakers, the limited appeal of State succession was evident from the limited participation of States in the two Vienna Conventions on succession of States and their scant support for the Commission's work on the topic "Nationality in relation to the succession of States".

In addition, as eloquently stated by Mr. Petrič, the Commission had to be very careful about creating exceptions to the general rule of non-succession. The notion of transferring legal responsibility for a wrongful act to an entity that had not committed it raised many questions, including that of justice, as pointed out by Mr. Reinisch and Mr. Petrič.

The highly personalized nature of responsibility for wrongful acts in law in general was well established and constituted a fundamental right. To hold a person or entity responsible for acts that brought with them serious consequences, such as reparations, that could have an impact on the local population, was indeed unjust. Also, as mentioned by some previous speakers, the Commission would be creating an exception that produced an unjust result by imposing what could be onerous reparation obligations on a new State that had not committed a given wrongful act. For that reason, she understood the need for *terra firma* in law.

Although the Special Rapporteur had adopted the position that non-succession of internationally wrongful acts was the general rule, she shared the concern expressed by other members of the Commission, including Mr. Hmoud, Mr. Park and Sir Michael Wood, that, in the report, the rule was overshadowed by exceptions, which in some cases appeared to be presented not as exceptions but as alternative general rules.

That approach was hinted at in paragraph 20 of the report, in which the Special Rapporteur asserted that the first step was the determination of general rules of succession or non-succession and that such general rules were subject to exceptions and modifications. The reference to "modifications" in addition to "exceptions" implied making changes to the general rule, a point that was relevant to concerns expressed in relation to proposed draft articles 10 and 11.

She was therefore of the view that the exceptional nature of the transfer of State responsibility for the wrongful acts of a predecessor State to its successor State should be made abundantly clear in the report, the text of the draft articles and the commentaries thereto.

The Special Rapporteur put forward various grounds for exceptions to the general rule of non-succession, including the continuation of a wrongful act by a successor State, unjust enrichment and the existence of a direct link between a wrongful act and the territory where it was committed.

She questioned the use of "unjust enrichment" as grounds for an exception to the general rule of non-succession. Unjust enrichment was part of the laws of obligation and, in the simplest terms, arose when a party derived a benefit to which it was not legally entitled, to the detriment of the claimant party, and must give restitution to the injured party. Traditionally a concept of civil law related to the law of obligations, "unjust enrichment" had also been adopted by common law countries. The Iran-United States Claims Tribunal in the case concerning *Sea-Land Service, Inc. v. The Islamic Republic of Iran, Ports and Shipping Organization of Iran* had summarized the characteristics of unjust enrichment in the following manner: "There must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched." In cases of State succession, it was not always simple to identify the benefit received by the successor State from the injured party. Such grounds for succession would be context-specific and should be decided on a case-by-case basis. However, that was not reflected in the current draft articles, other than by the vague phrase "if particular circumstances so require". Cases of unjust enrichment might include States that had benefited from improvements on a

territory without being able to pursue their claim against the predecessor State, but as the draft articles currently stood, that was far from clear.

The exception linked to territory, set out in draft articles 7, 8 and 9, lacked support. Indeed, the proposition that the wrongful act committed by the predecessor State should create an *in rem* obligation that passed to the new State through territory seemed almost *contra legem*, given that the wrongful act must be attributed to a State, which was a legal personality that could be dissolved by law, unlike territory. Furthermore, the expression "if particular circumstances so require", used in draft articles 7 (2) and 9 (2) and (3), was overly vague; she supported the statement made by another Commission member that the *travaux préparatoires* of the Institute of International Law on the subject "Succession of States in matters of international responsibility" also lacked clarity on the matter. She therefore proposed that the expression should be deleted and that an explanation of the particular circumstances in question should be included in the commentary.

She supported the suggestion by a Member State that the Commission might produce model clauses for States in a succession situation to use as a starting point for determining where State responsibility lay and suggested that it should be made clear that those rules were subsidiary to the general rule. Doing so might make the Commission's work on the current topic more acceptable to a wider number of States.

Turning to the specific draft articles put forward by the Special Rapporteur in his second report, she said that she supported the proposal to make draft article 6 (1) a stand-alone provision and that it should be made more explicit that it was not based on attribution. The text proposed by Mr. Nguyen provided a good starting point for the Drafting Committee, as it made very clear that the draft articles reflected a general rule of non-succession.

She agreed with previous statements that the use, in draft article 6 (2), of the discretionary verb "may" seemed to imply that there was an alternative to holding the predecessor State liable for the internationally wrongful act. She proposed that paragraph 2 should be deleted or at least revised simply to state that in the case that the predecessor State continued to exist, the draft articles were without prejudice to the right of the injured States to invoke the responsibility of the predecessor State.

She did not fully support the statement by the Special Rapporteur in his report that the traditional doctrine of non-succession in respect of responsibility came mostly from the period prior to the codification by the Commission of responsibility of States for internationally wrongful acts, and that that could partly explain the thesis of the "highly personal nature" of international responsibility, which was not transferable from a wrongdoing State to a successor State. The non-transferability of the highly personal nature of a wrongful act was a well-established tenet of law. Wrongful acts were fundamentally different, legally speaking, from the transfer of simple property or debts, as codified in the 1978 Vienna Convention on Succession of States in respect of Treaties.

Draft article 6 (3) was therefore particularly problematic, as it sought to create an exception based on the so-called continuity of the attribution of the wrongful act of the predecessor State to the successor State; the phrase "if it is bound by the obligation" in that paragraph was also unclear. The articles on responsibility of States for internationally wrongful acts provided for one circumstance of continuation of attribution — in article 10, entitled "Conduct of an insurrectional or other movement". As was explained in the commentary thereto, the basis for the attribution of conduct of a successful insurrectional or other movement to the State under international law lay in the continuity between the movement and the eventual Government; in other words, the actors were the same, only their legal status changed. The exception to the non-succession rule proposed in draft article 6 (3) drew on the *Lighthouses* arbitration, a case with a number of particularities, including the fact that Greece had been legally subrogated to the rights and obligations involved. The tribunal had stated that it could not affirm the existence of general rules of succession of States in respect of State responsibility since the issue was so contextual. A key element of the tribunal's decision to hold Greece responsible had been based on the acknowledgement by Greece of the conduct as its own. That was more in line with article 11 of the articles on State responsibility, entitled "Conduct acknowledged and adopted by a State as its own".

Consequently, the responsibility of the successor State could not be based on continuity of attribution, but would, at best, constitute a new independent breach of the successor State, even if that State had consented to the transfer of such obligation. Draft article 6 (4) was also drafted in a manner that undercut the general rule of non-succession; she proposed redrafting it to read "An injured State may only claim reparations from the predecessor State unless expressly provided for otherwise by these draft articles."

Draft articles 10 and 11 were presented in the report as new rules, as hinted at by the verb "modify" in paragraph 20. Other members of the Commission had rightly pointed out that it was an odd situation for the successor State, in the case of separation, not to incur any obligation resulting from the wrongful acts of a predecessor State if that State continued to exist, whereas in the case of dissolution, the successor State did incur such obligations. In cases of transfer of obligations deriving from a wrongful act, she agreed that the rationale that the injured State could not be left without remedy ran counter to modern principles of law. Again, that was entirely different from transfers of debts or property.

In conclusion, while she had some concerns, she would nevertheless recommend that all the draft articles should be referred to the Drafting Committee.

Mr. Ruda Santolaria said that he wished to commend the Special Rapporteur on his second report, which reflected rigorous research that relied on diverse sources, and included examples from a range of times and places in history, in response to the concern expressed that his first report was mainly focused on European cases. As he had stated at the previous session, in the light of the specific nature of the topic and of the low number of ratifications of the 1978 Vienna Convention on Succession of States in respect of Treaties and of the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, the Commission's outcome might be better presented as draft conclusions rather than draft articles.

He supported draft article 5, which adequately reflected articles 6 and 3 of the 1978 and 1983 Vienna Conventions, respectively. With regard to draft article 6, the Special Rapporteur noted in the body of his report that since the predecessor State continued to exist, the continuing State should remain responsible for its own internationally wrongful acts committed before the date of succession; nevertheless, paragraphs 3 and 4 of the draft article could be interpreted to mean that the same was true in situations arising from the responsibility of successor States. A distinction was drawn by the Special Rapporteur between situations in which a State had obligations on the basis of responsibility for its own wrongful act, not as a matter of succession (transfer of obligations) from the predecessor State, and situations in which the internationally wrongful act committed before the date of succession of States by a predecessor State was still attributable to that State, in which case the possibility of invoking certain obligations of a successor State should be limited only to one of invoking reparation. The first situation brought to mind article 15 of the articles on State responsibility, entitled "Breach consisting of a composite act", in that the concept of "composite acts" referred to a situation where the wrongful act consisted not of an isolated act but of a practice or policy that was systematic in character and that the article allowed keeping the general rule of responsibility of the predecessor State if it continued to exist, while permitting the establishment of a separate attribution of acts to the successor State according to established categories. The second situation was more controversial in principle, in that even though responsibility was not attributable to a successor State, that State could have an obligation to provide reparation.

In draft article 7, he preferred the more neutral expression "separation of parts of a State", as it was used in the 1978 and 1983 Vienna Conventions, to the term "secession". He supported paragraphs 2 and 4 of the draft article, which allowed for the transfer of obligations to the successor State in certain situations, which he found acceptable; paragraph 4, specifically, reflected the content of article 10 of the articles on State responsibility, on the conduct of an insurrectional or other movement. On the other hand, he had reservations about paragraph 3, which stated that the obligations arising from an internationally wrongful act of the predecessor State, where there was a direct link between the act or its consequences and the territory of the successor State or States, were assumed by the predecessor and the successor State or States.

Regarding draft article 8, he was in favour of adding a definition for the term "newly independent State" under draft article 2; such a definition might take as its basis those provided in the 1978 and 1983 Vienna Conventions. He generally supported the content of draft article 8, paragraph 3 of which reflected the language of article 10 of the articles on State responsibility.

He supported draft article 9 (1) and (2), but had concerns, similar to those he had expressed concerning draft article 7 (3), about draft article 9 (3). It was noteworthy that the Special Rapporteur dealt specifically with cases of succession where the predecessor State had ceased to exist, laying out his reasoning in paragraph 148 of the report. He did not agree entirely with the Special Rapporteur's approach, in that successor States were subjects of international law distinct from the predecessor States, with their own legal personality; therefore, except in situations where the successor State assumed the status of "continuing State", he did not agree that the presumption of succession should replace the general rule of non-succession in respect of obligations arising from State responsibility.

Draft article 10, on the uniting of States, would benefit from further research into State practice. As for draft article 11, he supported paragraph 1, which provided for the possibility that, subject to an agreement, obligations arising from the commission of an internationally wrongful act of the predecessor State could pass to the successor States; however, he did not agree with imposing on the successor States an obligation to negotiate with the injured State in order to settle the consequences of the internationally wrong State of the predecessor State.

He was in favour of referring to the Drafting Committee all the draft articles proposed by the Special Rapporteur in his second report and agreed that further consideration by the Committee of draft articles 3 and 4, contained in his first report, should be postponed.

Programme, procedures and working methods of the Commission and its documentation (agenda item 12) (*continued*)

Mr. Hassouna (Chair of the Working Group on methods of work) said that the Working Group on methods of work was composed of Mr. Aurescu, Mr. Cissé, Ms. Escobar Hernández, Mr. Grossman Guiloff, Mr. Huang, Mr. Jalloh, Ms. Lehto, Mr. Murase, Mr. Murphy, Mr. Nguyen, Mr. Nolte, Ms. Oral, Mr. Ouazzani Chahdi, Mr. Park, Mr. Petrič, Mr. Rajput, Mr. Reinisch, Mr. Ruda Santolaria, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Vázquez-Bermúdez, Sir Michael Wood, Mr. Zagaynov and Ms. Galvão Teles (*ex officio*).

The meeting rose at 12.05 p.m.